SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [redacted] 14

R. J. THOMAS,

Appellant,

vs.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS.

STATEMENT AS TO JURISDICTION.

LEE PRESSMAN,
ARTHUR J. MANDELL,
HERMAN WRIGHT,
ERNEST GOODMAN,
Counsel for Appellant.

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IN THE SUPREME COURT FOR THE STATE OF TEXAS

No. 8160

EX PARTE R. J. THOMAS.

STATEMENT IN SUPPORT OF JURISDICTION.

The Relator and Appellant, R. J. Thomas, in support of the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully shows:

A.

Statutory Provisions Sustaining Jurisdiction.

The statutory provision which sustains the jurisdiction of the Supreme Court of the United States is Section 344(a) of Title 28 of the United States Code, reading, to the extent relevant here, as follows:

> "*Sec. 344(a).* Final judgment or decree in any suit in the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

The remedy by writ of error under the foregoing section has been abolished and an appeal substituted in its place by Section 861(a) of Title 28 of the United States Code.

B.

Statute of the State the Validity of Which Is Involved.

The statute of the State of Texas, the validity of which has been sustained by final judgment of the Supreme Court of the State of Texas, the highest court of said State, as not being violative of or repugnant to the laws of the United States is House Bill #100, Acts 1943, 48th Legislature of the State of Texas, Chapter 104 (Vernon's Annotated Texas Statutes, Article 5154A). The pertinent provisions of said statute here involved are:

"*Section 5. Organizers.* All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3), a space for his personal signature; (4) a designation, "labor organizer"; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership.

"*Section 2(c)* defines the term 'labor organizer' as follows: 'labor organizer shall mean any person who for

a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union;'

"*Section 4(a).* It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored.

"*Section 12.* Enforcement by Civil Procedure. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunction, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts."

The foregoing sections are believed to conflict with Section One of the Fourteenth Amendment, Article 1, Section 8 and, insofar, as it conflicts with the National Labor Relations Act, Title 29 Chapter 7 of the United States Code, with Article VI of the Constitution of the United States.

C.

Date of Judgment and Date of Application for Appeal.

The date of final judgment of the Supreme Court of the State of Texas, which is now sought to be reviewed was October 27, 1943. Appellant's motion for a rehearing was denied on November 24, 1943. The time for taking an appeal began to run on the date of the denial of said motion for a re-hearing, to-wit: Nov. 24, 1943. *Aspen Mining and Smelting Company* v. *Billings*, 150 U. S. 31.

The date on which the petition for appeal was presented and the appeal allowed was November 27, 1943.

Under the provisions of Section 350 of Title 28 of the United States Code, Appellant may bring his appeal within 3 months after the denial of said motion for re-hearing by the Supreme Court of the State of Texas.

D.

Nature of Case and Rulings Below.

Appellant, R. J. Thomas, is president of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO and one of the vice-presidents of the Congress of Industrial Organizations. He is a resident of the City of Detroit, State of Michigan.

Appellant arrived in Houston, Texas on September 22, 1943 to address a meeting on the following evening. The meeting was called under the auspices of the Oil Workers International Union, affiliated with the Congress of Industrial Organizations incident to its campaign to organize the employees at the Humble Oil Company, a petition for election having been heard by the National Labor Relations Board.

Shortly before the Meeting Appellant was served with a temporary restraining order issued by the 53rd Texas District Court upon a complaint filed by the State of Texas, enjoining Appellant "from soliciting membership in . . . and members for Local Union 1002 . . . and from soliciting memberships in any other labor union affiliated with the CIO . . . while said defendant is in Texas without first obtaining an organizer's card as required by law."

Appellant delivered his speech to the meeting attended largely by workers of the Humble Oil Company and solicited the audience in general and one Pat O'Sullivan in particular to join the Oil Workers International Union. Appellant had

not applied for or obtained a license (organizer's card) from the Secretary of State of the State of Texas as required by said Statute, House Bill #100.

An order for attachment was issued for the arrest of Appellant upon a motion by the State of Texas for contempt for violating the temporary restraining order.

At the contempt hearing on September 25, 1943 Appellant pleaded not guilty to the charge of contempt and by written pleading and orally urged that the temporary restraining order and House Bill #100, insofar as they prevented him from soliciting members into a union without first obtaining a license, were unconstitutional under the 14th Amendment to the Constitution of the United States and under certain other sections of the United States Constitution and of the Constitution of the State of Texas.

After hearing the testimony and overruling Appellant's motions to dismiss and quash, the District Judge found Appellant guilty of contempt of court for "violation of the law and of the order of this court" and sentenced him to "imprisonment for a period of three days and a fine of $100.00."

Thereupon Appellant was remanded to the custody of the Sheriff of Travis County, Texas, but was released within a few hours upon filing a bond set by the Chief Justice of the Supreme Court of the State of Texas upon a petition for writ of habeas corpus filed in that court.

In his petition for writ of habeas corpus and in the brief filed and arguments made in his behalf before the Supreme Court of the State of Texas, Appellant seasonably claimed that said Statute insofar as it prevented Appellant from soliciting members into a union without first obtaining a license, and the temporary restraining order issued thereunder, were unconstitutional on the grounds that they deprived Appellant of his right of free speech, that said Statute constituted class legislation, that it was discrimina-

tory and deprived Appellant of the equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States. Appellant also seasonably claimed that said temporary restraining order and Statute imposed an undue burden upon interstate commerce in violation of Article 1, Section 8 of the United States Constitution, and that they conflicted with the National Labor Relations Act in violation of Article VI of the United States Constitution.

On October 27, 1943 the Supreme Court of the State of Texas rendered its opinion and judgment denying Appellant's petition for writ of habeas corpus and remanding Appellant to the custody of the Sheriff of Travis County.

The Texas Supreme Court held that the Statute did not abridge Appellant's right of free speech or deprive him of his liberty under the 14th Amendment to the Constitution of the United States because said Statute only required labor organizers who solicited members "for a pecuniary or financial consideration" to obtain a license. The Court stated in its opinion:

> "A careful reading of the section of the law here under consideration will disclose that it does not interfere with the right of the individual lay members of unions to solicit others to join their organization. It does not affect them at all. It applies only to those organizers who for a pecuniary or financial consideration solicit such membership. It affects only the right of one to engage in the business as a paid organizer and not the mere right of an individual to express his views on the merits of the union."

The Court further held that the Statute did not require Appellant to obtain a license as a prerequisite to the exercise of his right to solicit a member in a union. The Court stated in its opinion:

> "Furthermore, it will be noted that the Act does not require a paid organizer to secure a license, but merely

requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union. The Act confers no unbridled discretion on the Secretary of State to grant or withhold a registration card at his will, but makes it his mandatory duty to accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith."

* * * * * * *

The Court further held that the Statute did not impose a previous general restraint upon the right of free speech. The Court stated in its opinion:

"In our opinion, the Act imposes no previous general restraint upon the right of free speech. It does not impose a general restraint on the right to solicit others to join the union, nor does it vest unlimited discretionary power in the Secretary of State to grant or refuse a registration card to any one qualified under the Act to solicit members for the unions. It merely requires paid organizers to register with the Secretary of State before beginning to operate as such."

The Court further held that the statute did not contravene the provisions of the 14th Amendment to the Constitution of the United States in that it was within the police power of the state to enact legislation reasonably necessary for the protection of the general public. The Court stated in its opinion:

"The regulation does not appear to be an unreasonable one. It is true that the Act interferes to a certain extent with the right of the organizer to speak as the paid representative of the union, but such interferences are not necessarily prohibited by the Constitution. The State under its police power may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they

are reasonably necessary for the protection of the general public."

The Court further held that the statute did not contravene the provisions of the 14th Amendment to the Constitution of the United States in that the State Legislature had the right to limit the right of a person to speak or act as agent of a labor union. The Court stated in its opinion:

> "'The Securities Act' (Art. 600a, Vernon's Civil Statutes) prohibits an agent from selling securities for another without a permit from the Secretary of State. Insurance agents are required to secure licenses before being permitted to sell insurance. Art. 5062a, Vernon's Civil Statutes. Railway agents are required to have a certificate of authority before being permitted to sell railway tickets. Art. 6415, Rev. Civ. Stat. 1925. A real estate broker is required to have a license before he may act as the agent for another. Art. 6573a, Vernon's Civil Statutes. Likewise, Congress has enacted a statute which requires agents of foreign governments to register with the Secretary of State before being permitted to so act. 22 U.S.C.A., Sec. 601. Numerous other illustrations could be given. None of these statutes have been held unconstitutional on the ground that they abridged the right of free speech or otherwise unnecessarily deprived a person of his liberty."

E.

Substantiality of Questions Involved.

The Appellant respectfully represents that the questions involved in its appeal to the Supreme Court of the United States are of a substantial nature. It is well established that an appeal will not be dismissed for want of a substantial Federal question, unless the contentions of the Appellant are "clearly not debatable and utterly lacking in merit." *Hamilton* v. *Regents of University of California*, 293 U. S. 245, 258.

The issue raised by Appellant's contention that the Statute and the temporary restraining order are unconstitutional as depriving Appellant of his right of free speech under the 14th Amendment to the Constitution of the United States is one which affects more than 12 million workers who are now organized into labor unions in this country. The effect of this Statute is to restrict and limit the labor unions of this country in their effort to organize workers, particularly in states where only recently organizing efforts have begun. The Statute as applied in this case makes the mere request by one of another to join a union, illegal. No dues, fees or any other consideration were involved in the solicitation by the Appellant in this case. If the right to ask a worker to join a union may be made illegal except on compliance with conditions imposed by the State, then all speech may be so conditioned. No claim has been made and no claim can be made that the act of asking a worker to join a union is in itself an illegal, improper or reprehensible one. The right to solicit workers to join unions has been protected by Congressional enactment in the National Labor Relations Act. It is no answer to say, as the Supreme Court of Texas has here said, that since the previous restraint is not a burdensome one, the State has a right to impose it. It is not the extent of the restraint but the power to impose one which is the true test of freedom of speech. *Grosjean* v. *American Press Company*, 297 U. S. 233.

However, the Statute actually places a substantial and burdensome previous general restraint upon persons seeking to obtain a license. The nature of the forms to be filled out and the time necessary to obtain these forms, to fill them out, submit them and receive the license, in themselves constitute a real restraint upon free speech. In addition, the Secretary of State may exercise, and has

exercised administrative discretion in issuing the license (organizer's card).

Merely because the Statute applies only to the solicitation by those who receive a pecuniary or financial consideration does not remove the constitutional protection of free speech from these persons. Freedom of speech is available to all, not merely those who can pay their own way. *Murdock* v. *Pennsylvania*, 63 Supreme Court Reports 870.

With respect to aliens and persons convicted of a felony whose rights have not been fully restored, the Statute absolutely prohibits the solicitation of a person to join a union. They are not even permitted to apply for a license. With respect to these two groups, the Statute therefore is clearly a denial of free speech under the 14th Amendment to the Constitution of the United States.

The United States Supreme Court has held unconstitutional statutes and ordinances which placed a previous general restraint on the right of free speech, press or assembly. This case comes within the principles established in these decisions:

Thornhill v. *Alabama*, 310 U. S. 88;
Lovell v. *City of Griffin*, 303 U. S. 44;
Schneider v. *New Jersey*, 308 U. S. 147;
Murdock v. *Pennsylvania*, 63 Supreme Court Reports 870.

However, no case has been presented to the United States Supreme Court involving the exact question presented here wherein a state has made it a crime for one to solicit another to join a labor union without first obtaining a license, and where the state has absolutely prohibited the solicitation of union members by aliens and persons convicted of a felony whose rights have not been fully restored.

The issue raised by the Appellant's contention that the Statute constitutes class legislation, that it is discriminatory and deprives Appellant of the equal protection of the laws as guaranteed by the 14th amendment to the Constitution of the United States has never been decided by the United States Supreme Court. The Statute is directed solely against those who solicit members for labor unions. No Texas statute requires persons who solicit for any other voluntary non-profit association to obtain a license. The enactment of this Statute is an attempt to impede and obstruct the organization of workers in the State of Texas and constitutes discriminatory legislation directed against labor unions.

In reaching its conclusion that the Statute is constitutional, the Texas Supreme Court compared the licensing of those who solicit members for labor unions with stock salesmen and insurance, railway and real estate agents. The right of free speech as guaranteed by the 14th Amendment has been placed by the United States Supreme Court on a different level than property rights protected under the same amendment, and regulations which may be within the police power of the State to make with respect to those engaged in business for a profit are not valid with respect to those who exercise civil rights where such regulations curtail and limit the exercise of such rights. *West Virginia* v. *Barnette*, 319 U. S. 624.

With respect to aliens and persons convicted of a felony whose rights have not been fully restored, the Statute even more clearly constitutes class legislation and unreasonable discrimination against these two classes of persons. Under the Statute these persons are absolutely prohibited from soliciting members for a union and may not even apply for a license. The issue raised with respect to the right of the State to prohibit the exercise of civil rights by these

two excepted classes has never been expressly passed upon by the Supreme Court of the United States.

The issue raised by Appellant's contention that the Statute imposes an undue burden upon interstate commerce in violation of Article I, Section 8 of the United States Constitution, and that it is in conflict with the National Labor Relations Act in violation of Article VI of the United States Constitution is important to the determination of the rights of labor unions under the National Labor Relations Act. The right to organize workers into a union necessarily carries with it the right to ask workers to join a union. This right is guaranteed by the National Labor Relations Act. However, the Statute, by limiting and curtailing the right with respect to certain persons and by absolutely prohibiting the exercise of this right by aliens and persons convicted of a felony whose rights have not been fully restored, directly conflicts with the purposes and express provisions of the National Labor Relations Act.

Furthermore, several other states (Kansas, Alabama) have recently enacted laws containing provisions similar to the Statute here involved. The rights of labor unions and their members under such statutes will remain in a condition of uncertainty with consequent harmful effects upon labor unions and their members until this uncertainty is resolved. A decision by the Supreme Court of the United States in this case will remove the uncertainty now existing by deciding whether a state may require a person to obtain a license before soliciting a member and whether a state may prohibit aliens and persons convicted of a felony whose rights have not been fully restored from soliciting persons to join labor unions.

F.

Cases Sustaining the Jurisdiction of the Supreme Court of the United States.

1. Jurisdiction to entertain an appeal from the decision of a State Court denying a petition for writ of habeas Corpus. *People* v. *Zimmerman*, 278 U. S. 63.

2. Jurisdiction to entertain an appeal from the decision of a State Court denying a petition for writ of habeas corpus where Appellant is found guilty of contempt of court. *Tinsley* v. *Anderson*, 171 U. S. 101.

3. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute abridges freedom of speech guaranteed by the 14th Amendment to the Constitution of the United States. *Cantwell* v. *Connecticut*, 310 U. S. 296.

4. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute deprives Appellant of the equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States. *Yick Wo* v. *Hopkins*, 118 U. S. 356, *Mellinckrodt Chemical Works* v. *State of Missouri*, 238 U. S. 41.

5. Jurisdiction to entertain an appeal from the decision of a State Court on the ground that a State statute imposes an undue burden upon interstate commerce in violation of Article I, Section 8, of the Constitution of the United States. *International Textbook Company* v. *Pigg*, 217 U. S. 91.

6. Jurisdiction to entertain an appeal of a State court on the ground that a State statute conflicts with a Federal

statute in violation of Article VI of the United States Constitution, *Davis* v. *Elmira Sav. Bank*, 161 U. S. 275.

Therefore the Appellant, R. J. Thomas, respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 344(a) of Title 28 of the United States Code.

Respectfully submitted,

LEE PRESSMAN,
ARTHUR J. MANDELL,
HERMAN WRIGHT,
ERNEST GOODMAN,
Attorneys for R. J. Thomas, Relator and Appellant.

APPENDIX "A".

Opinion of the Supreme Court of Texas.

No. 8160.

Ex Parte R. J. Thomas.

This is an original habeas corpus proceeding filed in this Court by relator, R. J. Thomas, to obtain his release from a judgment in contempt imposed by a trial court. The action involves the validity of Section 5 of House Bill No. 100, Acts 1943, 48th Legislature, Chapter 104, page 180 (Vernon's Annotated Texas Statutes, Art. 5154a), which Act prescribes certain regulations applicable to labor unions. The provisions of the Act pertinent to the action here under consideration are as follows:

"Section 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

"It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

"Sec. 2. * * * (c) 'labor organizer' shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union."

"Sec. 5. All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b)

his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, 'labor organizer'; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership."

"Sec. 11. If any labor union violates any provision of this Act, it shall be penalized civilly in a sum not exceeding One Thousand Dollars ($1,000) for each such violation, the sum recovered as a penalty in a Court of competent jurisdiction, in the name of the State, acting through an enforcement officer herein authorized. Any officer of a labor union and any labor organizer who violates any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a Court of competent jurisdiction, shall be punished by a fine not to exceed Five Hundred Dollars ($500) or by confinement in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment."

"Sec. 12. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts."

"Sec. 14. The provisions of this Act are to be liberally construed so as to effectuate the purposes expressed in the preamble and in such manner as to protect the rights of laboring men to work and/or to organize for their mutual benefit in connection with their work; nor shall anything

in this Act be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing with respect to all matters affecting labor and employment."

"Sec. 15. If any Section or part whatsoever of this Act shall be held to be invalid, as in contravention of the Constitution, such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid."

The State filed suit in the trial court, alleging that the relator was a labor organizer within the meaning of the Act, who for pecuniary or financial consideration was engaged in soliciting members for a certain labor union; that he had not previously applied to nor obtained from the Secretary of State an organizer's card, as provided for in Section 5 of the Act; and that he was threatening to and would violate the provision of said Section 5 of the above Act by soliciting members for said labor union in Texas, unless he was restrained from so doing. The trial court issued a temporary restraining order and caused notice thereof to be served on the relator. Thereafter the relator, who was a paid representative of the union, violated the terms of the injunction by soliciting members for said union without having first registered with the Secretary of State as provided for in said Section 5. After a hearing he was adjudged to be in contempt of court and his punishment fixed at a fine of $100.00 and confinement in jail for three days.

There is no question as to the sufficiency of the pleadings or the regularity of the proceedings in the contempt action, nor is there any contention that the facts were insufficient to show a violation of Section 5 of the Act. Relator's counsel in his argument before this Court conceded the existence of the necessary factual basis for the judgment in the contempt proceedings. His only contention is that said Section 5 of the Act violates the provisions of Article I, Section 8, of the State Constitution, which prohibits the enactment of any law abridging or curtailing the right of freedom of speech, and Article XIV, Section 1, of the Federal Consti-

tution, which prohibits a state from enacting any law abridging the privileges and immunities of a citizen of the United States or depriving any person of his liberty.

The right of the State under its inherent police power to regulate labor unions in order to protect the public welfare appears to be almost beyond question. In recent years, and particularly during the war, the necessity for and the power of labor unions and the effect of their operation upon the general public welfare have been fully demonstrated. As said in the preamble to the Act here under consideration, labor unions enter into practically every business and industrial enterprise, and greatly affect the economic condition of the country. Under our present social system millions of employees bargain for and secure their rights, such as wages, hours of labor, and other working conditions, through labor organizations. In addition, large sums of money are contributed in the form of dues by the employees for the support of the unions. The manner in which these unions function for the protection of their members greatly affects the economic life of the individual worker. Because of the large membership in a single union, and the limited opportunity of the individual member to personally familiarize himself with the manner in which his union is operated makes it impossible for the individual worker to protect himself in his own right against its mismanagement. These circumstances present a field for legislation by the State for the protection of the rights of the laborer as well as the general public.

The government under its police power always has the right to enact any and all legislation that may be reasonably necessary for the protection of the health, safety, comfort, and welfare of the public. 9 T. J. 503; Halsell v. Ferguson, 109 Tex. 144, 202 S. W. 317, 321; Bradford v. State, 78 Tex. Cr. Rep. 285, 180 S. W. 702; Wylie v. Hays, 114 Tex. 46, 263 S. W. 563.

Legislation by the National Congress regulating the relationship between labor unions and employers by the National Labor Relations Act of 1935 (U. S. C. A., Sec. 151 et seq.), commonly called the Wagner Act, was sustained under the commerce clause of the Federal Constitution.

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 81 L. Ed. 893, 57 S. Ct. 615, 108 A. L. R. 1352. Similar Acts by State Legislatures have been sustained under the police power of the State. Fenske Bros. v. Upholsterers International Union, 358 Ill. 239, 193 N. E. 112; 97 A. L. R. 1318; Wisconsin Labor Relations Board v. Fred Rueping Leather Co., 228 Wis. 473, 279 N. W. 673; Allen-Bradley Local No. 1111 v. Wisconsin Employment Relation Board, 237 Wis. 164, 295 Ill. App. 323, 14 N. E. (2d) 991; Davega City Radio, Inc. v. State Labor Relations Board, 281 N. Y. 13, 22 N. E. (2d) 145.

The power to regulate and supervise has been extended to unincorporated associations and societies, such as Ku Klux Klan. The People of the State of New York v. Charles F. Zimmerman, 241 N. Y. 405, 150 N. E. 497, 43 A. L. R. 909, affirmed 278 U. S. 63, 73 L. Ed. 184, 63 S. Ct. 84.

The fact that the Federal Government has legislated on the subject under the commerce clause does not exclude the right of the State to legislate on the same subject under its police power. Wisconsin Labor Relation Board v. Fred Rueping Leather Co., 228 Wis. 473, 279 N. W. 673.

We are therefore convinced that the regulation of labor unions is a proper subject for legislation under the police power by this State. It was for the Legislature, and not the courts, to say whether such legislation was necessary or was best for the interest of the people of this State.

We are brought then to a consideration of whether Section 5 of the Act here under consideration constitutes an abridgement or curtailment of the right of free speech or the deprivation of a person of his liberty, as guaranteed by the Constitution.

A careful reading of the section of the law here under consideration will disclose that it does not interfere with the right of the individual lay members of unions to solicit others to join their organization. It does not affect them at all. It applies only to those organizers who for a pecuniary or financial consideration solicit such membership. It affects only the right of one to engage in the business as a paid organizer and not the mere right of an individual to express his views on the merits of the union. Furthermore,

it will be noted that the Act does not require a paid organizer to secure a license, but merely requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union. The Act confers no unbridled discretion on the Secretary of State to grant or withhold a registration card at his will, but makes it his mandatory duty to accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith.

That the Legislature was justified in concluding that that part of the Act here under consideration was necessary for the protection of the general welfare of the public, and particularly the laboring class, can hardly be doubted. As previously stated, membership in labor unions runs into millions. Not infrequently thousands of employees work at a single plant. It is impossible for them to know each other, or to know those who purport to represent the various unions. When a laborer is approached by an alleged organizer it is impossible for him to know whether he is an imposter or whether he has authority to represent the union which he purports to represent. Thus a great field for the perpetration of fraud both as against the laborer and the union is presented. It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union and pay his dues in order to be able to work on a particular job are the representations of an accredited agent of the union and that the promises of such representative will be respected and carried out by the union; and it is equally important to the union that the purported representative be identified in order that pretenders under the guise of authority from the union may not misrepresent the organization, nor collect and squander funds intended for its use. The law is for the protection of both the laborer and the union.

Nothing is better established than the power of the Legislature to enact legislation for the purpose of preventing "fraud and deceit, cheating and imposition." 16 C. J. S. 555; Standard Stock Food Co. v. Wright, 225 U. S. 540, 56 L. Ed. 1197.

The regulation does not appear to be an unreasonable one. It is true that the Act interferes to a certain extent with the right of the organizer to speak as the paid representative of the union, but such interferences are not necessarily prohibited by the Constitution. The State under its police power may enact laws which interfere indirectly and to a limited extent with the right of speech or the liberty of the people where they are reasonably necessary for the protection of the general public. 12 C. J. 952. See also 9 T. J. 503; Cox v. New Hampshire, 312 U. S. 569, 85 L. Ed. 1049.

In the case of Carpenters Union v. Ritter's Cafe, 315 U. S. 722, 725, 726, it is said:

"Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the State to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenged as a denial of 'liberty,' the question always is whether the state has violated 'the essential attributes of that liberty.' Mr. Chief Justice Hughes in Near v. Minnesota, 283 U. S. 697, 708. While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals and general welfare of its people. * * * the limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise.' Ibid., at 707."

Many statutes have been enacted in this State which curtail or limit the right of one to operate or speak as the agent of another. For example: "The Securities Act" (Art. 600a, Vernon's Civil Statutes) prohibits an agent from selling securities for another without a permit from the Secretary of State. Insurance agents are required to secure licenses before being permitted to sell insurance. Art. 5062a, Vernon's Civil Statutes. Railway agents are required to have a certificate of authority before being permitted to sell railway tickets. Art. 6415, Rev. Civ. Stat. 1925. A real estate broker is required to have a license before he may act as the agent for another. Art. 6573a, Vernon's Civil Statutes. Likewise, Congress has enacted

a statute which requires agents of foreign governments to register with the Secretary of State before being permitted to so act. 22 U. S. C. A., Sec. 601. Numerous other illustrations could be given. None of these statutes have been held unconstitutional on the ground that they abridged the right of free speech or otherwise unnecessarily deprived a person of his liberty.

In our opinion, the Act imposes no previous general restraint upon the right of free speech. It does not impose a general restraint on the right to solicit others to join the union, nor does it vest unlimited discretionary power in the Secretary of State to grant or refuse a registration card to any one qualified under the Act to solicit members for the unions. It merely requires paid organizers to register with the Secretary of State before beginning to operate as such.

In the case of Cantwell v. Connecticut, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352, the Supreme Court condemned the right to impose censorship upon the right of religious worship or free speech by vesting in some officer discretionary power to issue or to refuse to issue permits for the sale and distribution of literature, but in that connection said:

"The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise."

The requirement of an organizer's card for paid labor organizers who solicit in Texas is nothing more than a "general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds." See also the case of Cox v. New Hampshire, 312 U. S. 569, 85 L. Ed. 1049, wherein the Supreme Court sustained a statute which required the obtaining of a license as a condition precedent to the right to parade in a city.

In the case of City of Manchester v. Leiby, 117 Fed. (2d) 661 (certiorari denied), 61 S. Ct. 838, 313 U. S. 562, 85 L. Ed. 1522, the court had under consideration the validity of an ordinance of the City of Manchester which required an applicant to register before being permitted to sell literature on the streets. In discussing the question the court there said:

"The challenged ordinance is modest in scope. It puts no restriction upon the giving away of books, papers, magazines, etc., at any time and at any place. Persons desiring to 'sell or expose for sale' such literature on the streets or other public places are required to identify themselves before a designated official who keeps a record of the name and age of the applicant. For a nominal deposit a badge is issued to the applicant, who must wear the same conspicuously while selling on the streets, so that citizens and police may readily see that the seller has complied with the ordinance. It is provided that this deposit is to be returned upon surrender of the badge. As we read the ordinance the superintendent of schools has no function to pass on the character of the literature which the applicant proposes to expose for sale; nor has he any discretion to grant or withhold the license. On the contrary, it is his simple duty to issue the badge upon receipt of the application 'properly executed.' Aside from the regulations applicable to children under fourteen, all that the ordinance does is to enable the city to keep track of persons selling literature on the streets."

* * * * * * *

"By contrast the Manchester ordinance now before us contains no element of prior censorship upon the distribution of literature. It requires only a simple routine act of obtaining a badge of identification before a person can sell on the streets. This reasonable police regulation, in our opinion, imposes no substantial burden upon the freedom of the press or the free exercise of religion."

The case of Lovell v. City of Griffin, 303 U. S. 444, 82 L. Ed. 949, relied on by relator, is not in point. The ordi-

nance there under consideration vested in the city manager the discretionary power to grant or refuse a permit to distribute literature of any kind at any time and in any manner, and thereby effectively imposed a censorship on the right to distribute such literature. The same is true of the cases of Hague v. Committee for Industrial Organization, 307 U. S. 496, 515, 516, 83 L. Ed. 1423, 1436, 1437, 59 S. Ct. 954; Schneider v. Irvington, 308 U. S. 147, 160, 84 L. Ed. 155, 164, 60 S. Ct. 146; Cantwell v. Connecticut, 310 U. S. 296, 306, 307, 84 L. Ed. 1213, 1219, 1220, 60 S. Ct. 900, 128 A. L. R. 1352. For an analysis of the opinions in those cases see Cox v. New Hampshire, 312 U. S. 569, 85 L. Ed. 1049.

We are of the opinion that the part of the Act in question is valid, and that the trial court acted within its authority in adjudging the relator guilty of contempt. Relator's petition for discharge will be denied, and he will be remanded to the custody of the Sheriff of Travis County, in order that the judgment of the district court may be enforced.

JAMES P. ALEXANDER,
Chief Justice.

Opinion delivered October 27, 1943.